(1) (9)

COURT FEE INDIA FIVE RUPEES — CANCELLED — COURT FEE INDIA FIVE RUPEES

C.S. 101

SINGLE BENCH

IN THE HIGH COURT OF JUDICATURE OF CHHATTISGARH AT

BILASPUR

Writ Petition (C) No. 6048 /2006

Petitioners: (Plaintiff)

Lala Ram aged 39 years son of Shri Bhairo Prasad, Caste Kurmi, resident of Village Pendri, Tahsil Takhatpur, Distt. Bilaspur (C.G.)

P.R. No. 6024/06
Presented by Shri A.K. Gharsenia
dated 3-11-06
4:20 P.M.

VERSUS

Respondent: (Defendants)

1. Onkar Prasad son of Ghanshyam Prasad
2. Bhairo Prasad son of Amarnath

Both of them Caste Kurmi, resident of Village Pendri, Tahsil Takhatpur, Distt. Bilaspur (C.G.)

3. State of Chhattisgarh through Collector, Bilaspur (C.G.)

RECEIVED COPY
3/11/06
R to A.G. BILASPUR

WRIT PETITION UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA.

XI-HC-78

(20)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P. 6048 **सन् 2006**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

22.11.2006

Shri Kamal Pandey, counsel for the petitioner.

Shri G.K.Beriwal, Dy. Advocate General for the State.

Heard on admission.

By way of this writ petition, filed under Article 227 of the Constitution of India, the petitioner has challenged the legality, validity and propriety of the impugned order dated 5.9.2006, passed in civil suit No. 288-A/2005 by the IInd Civil Judge Class I Bilaspur.

By the aforesaid order, the learned trial Judge has closed the right of the plaintiff to adduce evidence after rejecting his application filed under Order 17, Rule, 1 of the Code of Civil Procedure and has fixed the case for defendants' evidence. It is stated at bar that the evidence of the defendants' side has not been taken so far and the matter is fixed for defendants' evidence on 12.12.2006.

The submission of learned counsel for the petitioner is that though the petitioner had already submitted the affidavits of his witnesses, but for their personal reasons, the witnesses could not be brought on the date fixed by the trial Court and with an intention to give a full opportunity to contest his case, he should be given one more opportunity to produce his witnesses by setting aside the order impugned.

After perusal of the order sheets filed by the petitioner, it appears that on 6.10.2005, affidavits from the petitioner side were deposited with the Court and since the Presiding Judge was on

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P. 6048 **सन्** 2006

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

leave, the matter was fixed for 27.10.2005, but on the said date also, the Presiding Judge was on leave and ultimately, the matter was fixed for 7.1.2006 and on 7.1.2006, it was against fixed for the plaintiff's evidence on 4.4.2006 and since 4.4.2006 till 5.9.2006, 2 more opportunities were given to the plaintiff, but he could not produced his witnesses and in the said circumstances, the trial Court has passed the aforesaid order, which does not appear to be unreasonable to this Court. However, considering the facts and circumstances of this case, particularly with an intention to do the complete justice with the parties in the particular facts and circumstances of this case, I deem it proper to award one more opportunity to the plaintiff to produce his evidence.

The impugned order dated 5.9.2006 is hereby set aside and the petition is disposed of with a direction that on 12.12.2006, the plaintiff shall produce his all witnesses and the trial Court shall firstly take the evidence of the plaintiff's side and thereafter, it shall proceed to take the evidence of the defendants' side and shall dispose of the case in accordance with law. But, all this shall be done subject to the conditions that the plaintiff shall pay to the defendants a sum of Rs.1000/- as the cost and he shall be allowed to take further steps in this case only after payment of the aforesaid cost imposed against him.

The petition is summarily disposed of in the aforesaid manner without notice to the other side. However, if the opposite party feels any grievance against the order passed by this Court in

XI-HC-78

(22)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ...W.P...6048.... **सन् 2006**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

this writ petition, they shall have a liberty to approach this Court with an appropriate application/petition.

It is made clear that if the plaintiff fails to produce his all witnesses on the said date, the case shall stand closed and the trial Court shall proceed with the case of the defendants by giving them opportunity to adduce their evidence. It is further made clear that if the plaintiff's evidence could not be completed on the said date, it shall be taken on the very next day.

With the aforesaid observations, the petition stands finally disposed of.

Sd/-
Sunil Kumar Sinha
Judge

sumita

24.11.06

P.T.O.